Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JAMES L. MARTIN, PETITIONER

v.

DEL. LAW SCHOOL DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF TRANSPORTATION; BUREAU OF TRAFFIC SAFETY OPERATIONS; PA BOARD OF LAW EXAMINERS; COMMONWEALTH NATIONAL BANK; POLYCLINIC MEDICAL CENTER OF HARRISBURG; PHILHAVEN HOSPITAL; THOMAS GATES; JOHN C. WALTERS; LEBANON VALLEY COLLEGE; LEGAL SERVICES ASSOCIATION; JOHN E. FEATHER, JR; JAMES T. REILLY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. If a private party to a petition for a writ of mandamus prevails, but if the Supreme Court justices are under the false impression that said party lost the case instead of winning it (because the law clerks did not distribute the private party's interim briefing with the lower court's intervening decision to chambers), should the Court amend the Opinion(s) and Order(s) to show that the party did prevail, rather than to advance the ruse that the prevailing party lost?

B. Are a recused justice's prior decisions, issued during his tenure in the court below and tainted with conflicts of interest and other disqualifying circumstances, set aside as void *ab initio*, voidable, or honored as valid?

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The decision for review was issued on 12-19-2008, at Ex-1a to 4a, with judgment at 5a to 6a. On 10-14-2009, mandate was recalled, at 7a to 8a, in view of its entry while rehearing was pending, and the decisions on rehearing, and on rehearing *en banc*, were issued at 9a to 10a. The trial court decision is at 11a to 15a, with a decision on rehearing at 16a to 17a. Petitioner's Application to Recuse and to Disqualify Justice Alito was filed here on 3-27-2010, and he was recused the same day. Justice Sotomayor extended the deadline for a certiorari petition to 6-10-2010. This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

JURISDICTION

The Court of Appeals has jurisdiction pursuant to 28 USC Sec. 1291, and the Federal District Court had jurisdiction based on 28 USC Sec. 1331(a), and on 28 USC Secs. 2201 and 2202

RELEVANT PROVISIONS INVOLVED

28 USC Sec. 47 Disqualification of trial judge to hear appeal

> "No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

28 USC Sec. 455 DISQUALIFICATION OF JUSTICE, JUDGE, ...

> "(a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

F. R. Civ. P. 60(b):

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

STATEMENT

Facts. On 12-11-1997, Justice Alito served as a trial judge on a panel of three judges during his tenure on the Third Circuit, when he presided over *In the Matter of James L. Martin*, CA Misc. No. 97-8096. On 9-8-1997, I filed a Motion to Recuse Justice Alito:

> Justice Alito worked as a US Attorney in NJ for several years before beginning his tenure as a judge. Because the US Attorney's Office in NJ has been retained to represent parties in related cases involving similar issues, Justice Alito should be recused and disqualified.

Justice Alito did not grant the motion, despite his 5-19-1994 letter to Clerk Sisk:

> . . . [S]ince becoming a judge on June 15, 1990, I have recused myself in all cases in which the

> United States Attorney's Office for the District of New Jersey has appeared. * * * * * * * I will, however, continue to recuse myself in any cases that were handled by the United States Attorney's Office for the District of New Jersey during the period when I was United States Attorney, i.e., from March 23, 1987, to June 15, 1990.

Justice Alito's 5-19-1994 letter mandated his automatic recusal in all cases like mine, where the NJ US Attorney's Office represented parties from 1987 to 1990. His answers to the Senate Judiciary Committee about "recusal," responsive to question 23 on the application for his current position, contradict what he wrote in his Appendix 4, Question 23.c, where he speculated the contradiction "occurred due to clerical error:"

> On April 11, 1991, I wrote the following memo: A[sic] am recused in cases involving Mr. Sassover but not Mr. Martin. Nevertheless, I was recused from this case. It is possible that recusal occurred due to clerical error.

His Appendix continues,

> "91-5512 Martin v. Knox [--] U.S. Attorney's Office, on standing recusal list," and "92-2035 Hammond v. Creative Financial [--] The Clerk's Office lists this as one that involved my recusal, but the docket sheet does not indicate that I recused, and I have no specific recollection of considering recusal in this case."

At one point, Justice Alito wrote to the Senate in this application that the court's records did not enable him to ascertain the status of whether he was disqualified or not. His last claim, in his Appendix filed with the Senate, refers to No. 94-5147, Martin v. Townsend, where he wrote:

> "The Clerk's Office recused me from this case based on my standing recusal list, but I am uncertain which party or attorney triggered the recusal."

Delaware Senators Carper and Kaufman did not respond after I notified their staffs about Justice Alito's untrue statements concerning recusals and disqualifications about my work on the application he filed with the Senate. I raised the question with them about whether any sanction, issued from the Senate, may be imposed in view of the false and misleading statements of facts on his Senate application.

The decision to recuse Justice Alito from participating in the disposition of this petition was entered on 3-27-2010, the day I served and filed a document entitled "Petitioner's Application to Recuse and to Disqualify Justice Alito, and a Rule 30 Application for Extension of Time to file Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit. Case Analyst Gail Johnson notified me by letter dated 4-7-2010:

> The application for an extension of time within which to file a petition for writ of certiorari in the above-entitled case has been presented to

> Justice Sotomayor, who on April 7, 2010 extended the time to and including June 10, 2010.

The notice to me contains nothing about a decision on my Application to Recuse and to Disqualify Justice Alito. He issued his intent to recuse from cases like this one in his answer to question 22 filed with the Senate: "Specifically, I would recuse myself from any cases in which I participated as a judge on the U.S. Court of Appeals for the Third Circuit." He has no credibility with this petitioner, however, in view of his false statements to the Senate about his recusals and of his involvement in these related cases when he served as the US Attorney for NJ, and as a Third Circuit judge.

The Clerks refused to docket or to transmit Motions to Recuse prior to 3-27-2010. For example, on 4-7-2000, I served an Application to Recuse and to Disqualify the late Chief Justice Rehnquist in view of his affiliation with the respondent Law School as the unresolved issues from this case affected related cases. Assistant Clerk Cynthia Rapp responded by letter dated 4-10-2000:

> Your application for recusal and disqualification received on April 7, 2000 is herewith returned for the following reasons. The request is premature as you currently have no case before the Court. Furthermore a Justice will sua sponte recuse him or herself it it is appropriate

I responded by letter dated 6-3-2000:

> . . . You suggest that recusal applications are premature for all issues prior to the issuance of a docket number. In fact, a petitioner before the court is entitled to an arguably neutral justice on all issues, including preliminary ones as well as applications for stays. Your comment about a *sua sponte* recusal is not entirely incorrect, but it does not preclude a petitioner from seeking recusal. Obviously, Chief Justice Rehnquist should have been recused from all cases involving the Delaware Law School of Widener University, but he was recused from none of those cases. See attached article [detailing his relationship to the Law School, and that nexus includes his law clerk Jeff Moulton's teaching at the Law School]. . . . A neutral justice would have made a decisive difference in the cases I brought, and will continue to bring, before the court.

Shortly thereafter, after I served a similar motion in a related case, Assistant Clerk Francis J. Lorson wrote to me in a letter dated 7-10-00: "Your motion for the Chief Justice to recuse himself was received and has been circulated to the Court for its information. Such motions are not placed on this Court's docket." Because Motions to Recuse were not docketed, a litigant was unable to raise the recusal issue, unless the issue were raised in the certiorari petition itself, and that is how I proceeded in several later petitions, but with no different result.

Senators Leahy and Lieberman wrote a letter dated 1-22-2004 to Chief Justice Rehnquist about the same issue, the appearance of impartiality; specifically,

". . . whether mechanisms exist for the Supreme Court to disqualify a Justice from participating in a matter or for review of a Justice's unilateral decision to decline to recuse himself." His reply, dated 1-26-2004, reads in part: "A Justice must examine the question of recusal on his own even without a motion, and any party may file a motion to recuse." As the correspondence from Assistant Clerks Lorson, Rapp, and others indicate, such recusal motions, if accepted at all, are not docketed and are not ruled on.

The same recusal problems arose and persist at the trial court, where Judge Farnan, a paid employee of the respondent Law School in the case at bar, persisted with lying about his nexus with the Law School as he sabotaged the final administrative decision in my favor and against his former employer for six (6) years, until 1991, when I filed an extensive Motion to Recuse in the trial court. The Clerk enabled the dishonest judge, since disgraced but not disciplined for his critical role in the most nefarious public corruption case in New Castle County since the early 1990s, issued a "Notice of Reassignment," so that the Motion to Recuse was not decided on its merits, and the question about the effect of a biased judge's decisions was left unanswered. His next successor was a member of the Law School's law firm when this case arose. She denied my Motion to Recuse directed against herself, and her decision was not reversed on appeal to the Third Circuit, unable to convene a quorum if the judges' conflicts of interest with the respondents, and if their prior service as trial judges on the same issues, are considered. Likewise, the judges on the Supreme Court of Delaware disqualified themselves as the parallel state cases have comparable issues, and the governor has not yet

convened an *ad hoc* court to deal with the lack of a quorum.

A reason for reopening this case appears in my 7-24-2007 Motion,

> Despite my good driving record ever since I was licensed, in May 1969, the clerk refused to renew my license, based on the documented misconduct of the parties to this case, and not corrected despite the passage of more than twenty-five (25) years.

Although the Delaware federal judges remain on the bench who involved themselves in this case despite their conflicts of interest, it was assigned to another judge, who misunderstood what was requested and the reasons. Most of the Memorandum filed with the Motion is clearly marked "BACKGROUND [emphasis in original]," but the trial judge claimed that the issue that arose for the first time on 5-24-2007 had somehow been litigated to finality "over fifteen years ago," at 13a, by a judge who was removed in view of his ineligibility to serve. After that decision, I filed a Motion to Recuse various judges in the Third Circuit, but it was "denied as moot," at 4a.

Karen Weldin Stewart, who worked on Senator Harris McDowell's staff at the time, and who is now Delaware's Insurance Commissioner, investigated the reasons for the withholding of my driver's license to learn about a NJ suspension attributed to me from from 1991. Springfield Township Municipal Court Administrator Ruth Ann Bice faxed her my Affidavit

and Motion to Dismiss on 9-18-2007. The Affidavit reads,

> As indicated on the citation, I was stopped on the New Jersey Turnpike at 7:48 a.m., on 3-12-91. The conditions, as also indicated [on the citation], are: the area was rural, the road was dry, the traffic was light, and the visibility was clear. The middle lane, of three lanes, was blocked with red cones to mark the zone as a construction area. The two outer lanes were open [I was in the slow lane, next to the right shoulder]. No construction was underway at this hour in the morning. No construction equipment, supplies, or workmen were around. Traffic was moving at about 45. The signs I saw in the zone said 45 [and I was charged with driving 45], although Officer Flanagan said that part of the zone's speed limit was only 35. None of the flashing, mechanical speed limit signs were on at this time in the morning. . . ..

(I was on the way to a hearing convened under the direction of the NJ Supreme Court, consisting of a Character Committee, who purported to inquire about my eligibility to practice law after I had already been admitted to practice law. I explained that the Committee had no jurisdiction, and they had no basis to launch any inquiry into my medical history. Despite my objections, they asked lots of questions, and compounded falsifications their colleagues had already made to a transcript of a prior hearing. The fabricated transcript did not resemble what was actually said in many parts.)

The Motion to Dismiss concluded:

> Even during off-hours, if the speed limit on the NJ Turnpike were only 35 under the ideal road, traffic, mechanical, and weather conditions stipulated to, it would be unreasonably slow. WHEREFORE, the complaint should be dismissed.

Administrator Bice informed Commissioner Stewart that a James Martin appeared at trial in 1991 and was found guilty, and that he agreed to an installment payment schedule for the fine. I explained that I did not appear for any trial, and that I did not know of any arrangement to pay a fine for what I understood had been dismissed. I also learned that the rules changed in my favor from the citation date in 1991 to the time when New Jersey notified Delaware to withhold my license, in 2007, so that when I was being prosecuted for driving 45, the speed limit was 45 in light of the limit's being increased from 35 to 45.

To resolve these issues, I agreed to appear in Municipal Court on 10-9-2007, where State of New Jersey v. James L. Martin, No. SPS-079801, was called before Judge Richard E. Andronici. Commissioner Stewart, while working with Senator McDowell, requested the transcript of the hearing with my consent and encouragement. On 6-9-2008, Court Reporter Susan B. Callaghan certified the proceedings to consist of the introduction, when Judge Andronici said, "A guilty plea was entered on May 6th of 1991, . . . actually, it was a trial." Trn., p. 3. The file was intact at that time, according to disclosures made in open court, but the judge mentioned that he wanted to read the

rest of it, only to learn that a trial never occurred. He was critical of the way this case was mishandled, and understood the reasons I believed it had been dismissed. Reporter Callaghan transcribed what she heard:

> THE COURT: You are right. I just saw it [Motion to Dismiss] in the file. Stand by.
> (Off the record. Back on the record)
> THE COURT: Let me handle this PD ap and I'll get out of your way.
> (Unrelated court matters heard)
> (Case never comes back on)

I talked with at least ten attorneys who practice in New Jersey Municipal Courts, including those in Burlington County, and some have decades of experience. I found no one who had a similar case, where a transcript was being withheld or unavailable less than a year after the hearing was recorded. Because the New Jersey court system now relies entirely on tape recordings to preserve the record, court reporters are no longer in court to record testimony as it is being given. To the extent the partial transcript implies that I waited until other cases were heard before my case was recalled, that is false. The presiding judge read the file in less than five minutes, and it consisted mostly of my two-page Motion to Dismiss, and of my two-page, supporting affidavit. Court personnel had included false comments that were brought out during the hearing on 10-9-2007. Although one attorney at a large firm did know about the civil rights remedies available for pleading in federal court against state court officials who violate civil rights, as by withholding or by falsifying court transcripts, he

was unwilling to sue any court officials, under any circumstances.

Respondent PennDOT caused a similar problem to enjoin the renewal of my license in 2007. After I appeared in the Superior Court of Pennsylvania on 6-6-1984, Judges McEwen, Tamilia, and Hoffman issued a decision that says, "Appellant's operating privileges were reinstated during the pendency of this appeal. We, therefore, are constrained to dismiss this appeal as moot." I encouraged them to issue a decision on the merits to foreclose the problem from arising anew, but they refused to do so. The federal district courts likewise refused. When the computer system for Delaware was not functioning on 10-26-2007, Commissioner Stewart called me after having informed DMV staff what she learned about my record, and suggested that I immediately appear at the DMV, so the tainted records in their system would not interfere with the issuance of my license. I did so, and my license was renewed. The same issue will recur again, until the record is rectified.

In my request for additional time, I referred to test results that were pending. Since then, Neuropsychologist Bruce Caplan issued an eighteen-page report: "To summarize, Mr. Martin is a very bright man . . .." He further noted, ", , , Mr. Martin obtained a 99th %ile score on the WAIS-III 'verbal comprehension' factor." The test was required during personal injury litigation in state court, and opposing counsel selected the examiner.

Another respondent's condition changed dramatically this year. Mark Dows, the PA Board of

Law Examiners' Executive Director for the past decade, was found dead on 2-9-2010 in the basement of the PA Judicial Center in the state Capitol complex from a self-inflicted wound, according to a statement from the Administrative Office of PA Courts. He served on the Board since 1998, and *ex officio* denied my legal efforts during his tenure to rectify my record there, tainted with accusations about medical disability. Although "crimes of moral turpitude" comprise the standard for denying a bar applicant, and although I did not even have a citation for driving 45 in a 35 zone on the turnpike when I applied in 1983, the respondent Board has continued its tactics.

William L. Kraus, III, who met with NJ Admissions Clerk Julie Knox and then boasted about how he succeeded with having her deem my law license a "clerical mistake," died on 4-28-2004 from "complications of alcoholic liver disease" according to the death certificate. Clerk Knox would not even talk with my clients by phone after they heard I was no longer in good standing as an attorney. Justice Alito's office represented her.

Kim Lacey, with Guinness World Records in London, issued a letter to me dated 12-11-2006 referring to claim ID 109545 that says: "We are pleased to confirm that you have set the new Guinness World Record for 'Longest running civil court case by an individual' and a certificate to commemorate has been sent to you by post today." The case description refers to

> . . . academic and professional discrimination and interference –an issue that Mr. Martin, the Office

for Civil Rights and the US Department of Education, argue violate the Rehabilitation Act of 1973, which forbids discrimination on the basis of alleged or of actual medical history.

REASONS FOR GRANTING THE PETITION

If a private party to a petition for a writ of mandamus prevails, but if the Supreme Court's justices are under the false impression that said party lost the case instead of winning it (because the law clerks did not distribute the private party's interim briefing and lower court's intervening decision to chambers), the Court should amend prior Opinion(s) and Order(s) to show that the party did prevail, rather than to advance the ruse that the prevailing party lost.

Justice Blackmun's Papers enabled me to see previously confidential, internal memos, and to isolate a controlling problem within the Court. Justice Scalia's draft, circulated on 11-26-1991, in *Martin v. Knox, et. al.* 112 S Ct 620 (1991), says "this latest offering is patently frivolous." The "offering" included a mandamus petition directed against NJ federal Judge Fisher, to compel him to issue a decision on a Motion to Recuse. When I drafted and served the certiorari petition, the Motion at issue was pending. On 9-16-1991, Judge Fisher granted the Motion to Recuse entered at *Martin v. Francis, et. al.*, No. 91-3206 (CSF):

It appearing that plaintiff herein, James L. Martin, filed a petition for a writ of mandamus with the United States Court of Appeals for the Third Circuit seeking my recusal from hearing the matter entitled Martin v. Knox . . . and good cause appearing, IT IS on

this 16th day of September, 1991, ORDERED that I hereby recuse myself . . ..

My Rule 15.7 Supplemental Brief, received but not filed in the U.S. Supreme Court Clerk's Office on 11-12-1991, says:

Since I prepared the Petition for a Writ of Certiorari on 9-14-91, respondent Judge Clarkson S. Fisher [two days later] granted [the relief sought in] my petition for a writ of mandamus directed against him in a closely related case, at No. 91-3206, which is pending in the NJ Federal District Court. A copy of the Order of Recusal, dated 9 16 91, is attached. Because the issues overlap, and because the evidence in support of the recusal in No. 91-3206, which was granted, is identical to the evidence adduced in support of the recusal motion in the case *sub judice*, issue C in this petition may be viewed as moot, and issue D may be viewed as conceded, in view of the recusal order attached.

Instead of distributing this outcome-determinative supplemental brief to chambers, the clerk returned it to me, and Justice Scalia proceeded to claim, "Almost all Americans make it through an entire lifetime without making a single Supreme-Court filing at taxpayer expense." Almost all Americans are affected by decisions from the Supreme Court, even if they do not directly participate as parties to the cases presented, and the Court should carefully distinguish those parties who prevail on the one hand, from those who lose on the other hand. To remedy this problem, I prepared a Petition for Rehearing in the same case, and filed it with the Clerk on 12-12-91, but it was also

impounded, not distributed to chambers, and returned to me. The file in the Library of Congress does not even disclose its filing. On 10-30-91, Justice Blackmun's Clerk Baxter wrote, "The petn [sic] is no less frivolous," even though the motion underlying the petition was granted "for good cause" on 9-6-91. In a later memo dated 11-5-91, Clerk Baxter changed his mind, and may have understood the clear division of authority between the Circuits on the question about whether mandamus was allowed to compel a decision on a long-standing recusal motion, in contrast with an appeal: "However, in view of the split as to an issue on which CA3 relied, I find it difficult to call the petn [sic] 'frivolous'."

Although the court reporter's failure to provide a complete transcript arose in New Jersey and although this case arose in Delaware, a decision to correct the records with awarding a prevailing party a favorable judgment, in contrast to the current record, even if it relates to many years ago, should be issued immediately, *nunc pro tunc*. After an amended decision is entered, the interrelated cases may proceed before a neutral judge.

A recused justice's prior decisions, issued during his tenure in the court below and tainted with conflicts of interest and other disqualifying circumstances, should be set aside as void *ab initio*.

Justice Alito was not recused because of a clerical error; rather, he was automatically recused because the Clerk's Office showed these related cases as having litigants who had been represented by the NJ US Attorney when Justice Alito served in that office. The point Justice Alito repeatedly made to the Senate

to justify his failure to recuse when it should have been automatic is: "The motion [I filed to recuse] did not allege specific facts in support of this claim [for recusal.]" Because the recusal was automatic and issued by the Clerk, Justice Alito should not have been involved in any of these related cases before the court again now. The Supreme Court of the United States adopted a similar procedure through the Clerk's Office, so that justices are automatically disqualified if cases come before the court where litigants are represented through law firms where they worked, or if they are otherwise related. For example, when one of my related cases came before this court years ago, Justice Brennan was automatically disqualified because his son was counsel of record for the respondents.

In his answer to the Senate, Justice Alito wrote, "As I do currently, I would look to the letter and spirit of the rules and guidelines [to decide recusal issues.]" The record shows Justice Alito to have claimed he "was not a member of the merits panel" when these related cases were before the Third Circuit. He was a member of the merits panel at No. 97-8096, and he did not even mention that case in his answers to the Senate Committee, even though I filed for his recusal, and even though the Clerk properly recused him automatically at No. 91-5512. His answer about inaccurate court records is especially troubling. In reference to No. 91-3596, he wrote, ". . . [T]he court's [Third Circuit's] records do not indicate whether I participated in a decision to deny rehearing en banc." This statement is also incorrect, and because of all the other misstatements of fact referring to my motions for his recusal, Justice Alito's false statements cannot be viewed as unintentional. Even if the court's records were so deficient so that one

cannot tell who is participating in a specific case, this petition should be granted to restore court records, including transcripts, to show what was done and who was involved. In any instance, the duty for judges and court personnel to provide accurate records of decisions and proceedings should be part of the decision in this case.

Justice Alito's persistence with presiding over interrelated cases, despite the Clerk's entry of his recusal from the same matters, is similar to abuses evident from Justice Harry A. Blackman's Papers, released to the public in the Library of Congress. Memos, like this one, issued from law clerk McKinnie on 6-8-1988, read: "This petn [sic] was forwarded only to the Legal Office and was not circulated to Chambers." *In Re James L. Martin*, 487 US 1228 (1988), *reh. den.* Identical comments appear in the related cases, like *In Re James L. Martin*, 492 US 904 (1989), *reh. den.* The docket sheets reinforce what some Memos disclose: Despite the filing of a series of interrelated cases to carry out a final administrative order, justices did not necessarily read the petitions. If they had, the docket sheet would disclose their review, whether "grant, refuse, [or] rule." Some law clerks inserted inflammatory, gratuitous comments in summarizing these cases, and could not see some aspects had previously been decided in my favor.

Most of the reported cases pertain to whether a judge should be disqualified prospectively, rather than whether tainted decisions should be declared void, or voidable on motion of an aggrieved party. The most equitable rule proposal is from the Texas Supreme Court Advisory Committee:

In any case where a judge has been disqualified, the judge assigned to hear the case shall declare void all orders entered by such judge, and shall rehear all matters that were heard by the disqualified judge.

CONCLUSION

This petition should be granted to amend prior orders of the court that were entered to contradict underlying interim motions that were granted, received in the court for filing, but not transmitted to chambers according to disclosures made available from Justice Blackmun's papers. Justice Alito's involvement in these same issues should be vacated *nunc pro tunc*, so that an arguably neutral judge may give effect to orders entered in my favor.

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No. 08-3310

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES L. MARTIN, Appellant

v.

DEL. LAW SCHOOL DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF TRANSPORTATION; BUREAU OF TRAFFIC SAFETY OPERATIONS; PA BOARD OF LAW EXAMINERS; COMMONWEALTH NATIONAL BANK; POLYCLINIC MEDICAL CENTER OF HARRISBURG; PHILHAVEN HOSPITAL; THOMAS GATES; JOHN C. WALTERS; LEBANON VALLEY COLLEGE; LEGAL SERVICES ASSOCIATION; JOHN E. FEATHER, JR. JAMES T. REILLY

December 11, 2008, Submitted for Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

December 19, 2008, Opinion Filed

NOTICE: NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1

GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

COUNSEL: JAMES L. MARTIN, Plaintiff - Appellant, Pro se, Wilmington, DE.

For DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY, INC., Defendant - Appellee: Somers S. Price, Jr., Esq., Wilmington, DE.

Before: BARRY, CHAGARES and HARDIMAN, Circuit Judges.

OPINION

PER CURIAM

In January 1985, appellant James Martin filed a civil action in the United States District Court for the District of Delaware against numerous defendants alleging violations of, *inter alia*, 42 U.S.C. §§ 1983, 1985 and 1986, Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, as well as the Thirteenth and Fourteenth Amendments. Martin's causes of actions and allegations are more fully set forth in the District Court's opinion reported at *Martin v. Delaware Law School, et al.*, 625 F.Supp. 1288 (D. Del. 1985). Judgment was eventually entered against Martin, and we affirmed that judgment on August 14, 1989. *See* C.A. No. 88-3428. Martin returned to the District Court in January 1993 with a motion filed under Fed. R. Civ. P. 60(b)(4), wherein he argued, among other things, that the action should be reopened because the District Court judge failed to recuse himself despite his past involvement with the Delaware Law School. The District Court denied Martin's motion

in an order entered on May 10, 1993, and we summarily affirmed that decision on December 20, 1993. *See* C.A. No. 93-7401.

Martin returned to the District Court yet a second time on July 24, 2007, once again seeking to have the underlying action reopened. This time Martin argued that reopening was warranted under either Rule 60(b)(4), (5) or (6). While it is less than clear, it appears that the impetus behind Martin's latest effort to reopen stems from his actions on May 24, 2007, at which time he sought, but was refused, a renewal of his driver's license from the Delaware Division of Motor Vehicles ("DMV"). Martin asserts that the problem he experienced at the DMV is a result of the "documented misconduct of the parties to this case," which, Martin claims, has not been "corrected despite the passage of more than twenty-five (25) years." *See* Motion to Reopen at 1-2.

Martin's Reopen Motion fared no better than his first one. In a Memorandum Opinion entered on June 6, 2008, the District Court concluded that the grounds asserted in Martin's motion were nothing more than a "legally frivolous attack" on the decisions of the District Court judge who originally heard the case and disposed of the initial reopen motion filed in 1993. Moreover, the District Court concluded that the motion was "brought well beyond the bounds of the 'reasonable time' requirement imposed by Rule 60(c)." *See* District Court Mem. Opin. at 2. To the extent Martin intended to rely on Rule 60(b)(4) in an attempt to avoid a timeliness problem, the District Court concluded that Martin's efforts proved unsuccessful under the circumstances presented, i.e., where he was using Rule 60(b) merely as a mechanism to "wast[e] the judicial system's time

and resources with successive motions arguing identical issues." Id. at 3. Accordingly, the District Court issued an Order denying Martin's motion to reopen. A subsequent order was entered denying Martin's request seeking reconsideration of that decision.

This timely appeal followed. We have jurisdiction over the instant appeal pursuant to 28 U.S.C. § 1291, and review the District Court's orders denying Martin's motions filed under Rule 60(b) and Rule 59(e) for an abuse of discretion. *See Brown v. Phila. Hous. Auth.*, 350 F.3d 338, 342 (3d Cir. 2003); *Max's Seafood Cafe v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999). Martin has filed a motion asking us to summarily reverse the District Court's decision to deny him relief in accordance with Rule 60(b).

Summary action is warranted if an appeal presents no substantial question. *See* Third Circuit LAR 27.4; I.O.P. 10.6. While we agree with Martin's general contention that this appeal is appropriate for summary disposition, we do not agree that such action is warranted in favor of a summary reversal of the District Court's post-judgment decision. Rather, after careful review of the record in this case together with Martin's submissions, and for essentially the same reasons set forth by the District Court, we will summarily affirm its denial of Rule 60(b) relief. We do not hesitate to conclude -- and do so without further discussion -- that the District Court acted within its discretion in denying Martin's post-judgment motion. Martin's motion for recusal is denied as moot. None of the circuit judges he seeks to have recused are members of the panel that entertained this appeal.

No. 08-3310

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES L. MARTIN, Appellant

v.

DEL. LAW SCHOOL DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF TRANSPORTATION; BUREAU OF TRAFFIC SAFETY OPERATIONS; PA BOARD OF LAW EXAMINERS; COMMONWEALTH NATIONAL BANK; POLYCLINIC MEDICAL CENTER OF HARRISBURG; PHILHAVEN HOSPITAL; THOMAS GATES; JOHN C. WALTERS; LEBANON VALLEY COLLEGE; LEGAL SERVICES ASSOCIATION; JOHN E. FEATHER, JR; JAMES T. REILLY

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 85-cv-00053)

District Judge: Honorable Lawrence F. Stengel

Submitted for Summary Action Pursuant to Third
Circuit LAR 27.4 and I.O.P. 10.6
December 11, 2008

Before: BARRY, CHAGARES and HARDIMAN,
Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted for summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on December 11, 2008. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 1, 2008, be and the same is hereby affirmed. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
/s/Marcia M. Waldron
Clerk

DATED: December 19, 2008

No. 08-3310

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES L. MARTIN, Appellant

v.

DEL. LAW SCHOOL DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF TRANSPORTATION; BUREAU OF TRAFFIC SAFETY OPERATIONS; PA BOARD OF LAW EXAMINERS; COMMONWEALTH NATIONAL BANK; POLYCLINIC MEDICAL CENTER OF HARRISBURG; PHILHAVEN HOSPITAL; THOMAS GATES; JOHN C. WALTERS; LEBANON VALLEY COLLEGE; LEGAL SERVICES ASSOCIATION; JOHN E. FEATHER, JR; JAMES T. REILLY

Present: BARRY, CHAGARES and HARDIMAN, Circuit Judges

Motion by Appellant to Recall Entry of Mandate Issued on 09/17/2009 Pending Disposition of Petition.

/s/Carolyn Hicks/smw
Case Manager
(267)299-4926

Mandate issued 9/17/09.

ORDER

The foregoing motion is GRANTED.

By the Court,
/s/Maryanne Trump Barry
Circuit Judge

Dated: October 14, 2009
CH/cc: Mr. James L. Martin
Samuel S. Price Jr., Esq.

No. 08-3310

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAMES L. MARTIN, Appellant

v.

DEL. LAW SCHOOL DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY; COMMONWEALTH OF PENNSYLVANIA; DEPARTMENT OF TRANSPORTATION; BUREAU OF TRAFFIC SAFETY OPERATIONS; PA BOARD OF LAW EXAMINERS; COMMONWEALTH NATIONAL BANK; POLYCLINIC MEDICAL CENTER OF HARRISBURG; PHILHAVEN HOSPITAL; THOMAS GATES; JOHN C. WALTERS; LEBANON VALLEY COLLEGE; LEGAL SERVICES ASSOCIATION; JOHN E. FEATHER, JR; JAMES T. REILLY

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 85-cv-00053)
District Judge: Honorable Lawrence F. Stengel

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, and HARDIMAN, Circuit Judges

SUR PETITION FOR REHEARING

WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing en banc filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing en
banc is DENIED.

BY THE COURT:
/s/Maryanne Trump Barry
Circuit Judge

Dated: January 11, 2010
cc: Mr. James L. Martin
Somers S. Price Jr., Esq.

CIVIL ACTION D. Del.
Civil Action No. 85-0053-LS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN, Plaintiff v. DELAWARE LAW SCHOOL, et al., Defendants

June 6, 2008, Decided
June 6, 2008, Filed

COUNSEL: James L. Martin, Plaintiff, Pro se, Wilmington, DE.

For Del. Law School, Delaware Law School of Widener University, Defendant: Somers S. Price, Jr., LEAD ATTORNEY, Potter Anderson & Corroon, LLP, Wilmington, DE.

Judge Lawrence F. Stengel, by designation [1].

MEMORANDUM

STENGEL, J.

Plaintiff seeks to reopen a case that has been amply litigated in both state and federal court since Judge Farnan granted dismissal over twenty years ago. *See, e.g., Martin v. Delaware Law School of Widener University*, D.Del., 625 F.Supp. 1288 (1985), *aff'd. sub. nom*, 884 F.2d 1384 (3rd Cir. 1989), *cert. denied* 493 U.S. 966, 110 S. Ct. 411, 107 L. Ed. 2d 376 (1989), *reh'g denied*, 493 U.S. 1038, 110 S. Ct. 766, 107 L. Ed. 2d 781 (1990); *Martin v. Delaware Law School of Widener University*, D. Del. Civ. A. No. 85 53 JJF, at 3 (Oct. 16,

1986) (dismissing amended complaint that "merely rehash[ed] the allegations of the original Complaint" with prejudice); *Martin v. Widener Univ. Sch. of Law.*, No. 91C-09-255, 1993 Del. Super. LEXIS 148 (Mar. 17, 1993)(declining to reopen one of plaintiff's state court cases, which had been dismissed, partially on res judicata grounds based on Judge Farnan's decision; noting that plaintiff's motion to reopen was "totally without merit").

Rule 60(b) states, in pertinent part:

> On motion and upon such matters as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; (5) . . . applying [the judgment] prospectively is no longer equitable; or (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b)(4)-(6).

To the extent Mr. Martin asserts cognizable grounds for reopening his 1985 case under Rule 60(b)(4), (5) and (6), his claim is a legally frivolous attack on Judge Farnan's decisions, brought well beyond the bounds of the "reasonable time" requirement imposed by Rule 60(c), where applicable. *See Lasky v. Continental Products Corp.*, 804 F.2d 250, 255 (3d Cir. 1986) (for relief under Rule 60(b), "what is a reasonable time must depend to a large extent upon the particular circumstances alleged") (citing *Delzona Corporation v. Sacks*, 265 F.2d 157, 159 (3d Cir. 1959)); *United States v. One Toshiba Color TV*, 213 F.3d 147, 157 (3d Cir. 2000)(holding that Rule 60(b)(4) is not subject to the "reasonable time" requirement, since "no passage of

time can render a void judgment valid"); *but see, e.g., State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 178 79 (2d Cir. 2004) (holding that when, as here, a party makes one motion for relief under some other provision of Fed. R. Civ. P. 60(b), then makes a subsequent motion under Fed. R. Civ. P. 60(b)(4) arguing that judgment is void, second motion may be denied as unreasonably delayed).

Although plaintiff cites Rule 60(b)(4), (5) or (6) as potential grounds for relief, his Allegations of Law clearly indicate an enduring belief that the decisions of Judge Farnan were void *ab initio*, entitling plaintiff to relief under Rule 60(b)(4). If plaintiff relies on the notion that a Rule 60(b)(4) motion may be brought at any time, such reliance is misplaced under these circumstances, where a litigant uses the mechanism as a means of perpetually wasting the judicial system's time and resources with successive motions arguing identical issues. Moreover, Judge Farnan himself addressed the same Rule 60(b)(4) issue raised in the present motion over fifteen years ago, in a well reasoned opinion. *See Martin v. Delaware Law School*, D. Del. Civ. A. No. 85-0053-JJF (May 6, 1993) (Document # 176). The question requires no further consideration by this court or any other.

Lest the present decision should leave plaintiff under the false assumption that Rule 60(b)(5) or (6) may linger as possible avenues of relief, I will clarify that his claims under these headings are equally without merit. First, his motion is untimely and fails to state any rational ground to suggest that it would be inequitable for Judge Farnan's decision to stand under Rule 60(b)(5). "A party can show that a judgment should no longer have prospective application if it can

demonstrate a significant change in either factual conditions or the law." *ACLU v. Schundler*, 168 F.3d 92, 97 (3d Cir. 1999) (citing *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992)); *see also Lasky*, 804 F.2d at 255. Mr. Martin has failed to show any relevant change in the facts or law applicable to his claims to warrant further inquiry. His claim under 60(b)(5) is frivolous. Second, [HN5] courts throughout the country have limited the application of Rule 60(b)(6) to extraordinary instances of injustice that by no means present themselves here, and a Rule 60(b)(6) motion is only available where no more specific provision of Rule 60(b) may be invoked. *See, e.g., Eun Hee Choi v. Kim*, 258 Fed. Appx. 413, 416 (3d Cir. 2007) (noting the "extraordinary circumstances" requirement for seeking vacatur under Rule 60(b)(6)); *Stone Hedge Props. v. Phoenix Capital Corp.*, 71 Fed. Appx. 138 (3d Cir. 2003) (holding that totally unexplained delay in moving for recusal was unreasonable and that the initial unreasonable delay in filing the motion was a "compelling basis" to affirm the dismissal of this case); 12 MOORE'S FEDERAL PRACTICE P 60.48 (3d ed. 1999) ("If the reasons offered for relief from judgment could be considered under one of the more specific clauses of Rule 60(b)(1)-(5), those reasons will not justify relief under Rule 60(b)(6)."). Plaintiff's suggestion that Rule 60(b)(6) is available to him is therefore incorrect and his motion must fail. An appropriate Order follows.

ORDER

STENGEL, J.

AND NOW, this 6th day of June, 2008, upon consideration of Mr. Martin's Rule 60(b)(4), (5) or (6) Motion to Reopen (Document # 187), it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.

Footnote

1 See Designation of District Judge for Service in another District within the Circuit, D. Del. Civ. A. No. 85-0053-JJF, Document # 193 (designating and assigning this matter "for such period of time as is necessary" to arrive at a disposition).

CIVIL ACTION D. Del.
Civil Action No. 85-0053-LS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN,
Plaintiff

v.

DELAWARE LAW SCHOOL, et al.,
Defendants

ORDER

STENGEL, J.

AND NOW, this 30th day of June, 2008, upon consideration of Mr. Martin's Motion for Reargument (Document #195),[1] it is hereby ORDERED that the motion is DENIED.

Footnotes

1 I will construe plaintiff's motion as one for reconsideration of my Memorandum and 1 Order dated June 6, 2008 (Document #194), denying his motion to reopen the above-captioned case. A motion for reconsideration will only be granted if the moving party establishes: "(1) an intervening change in controlling law; (2) the availability of new evidence that was not available when the court [decided the original motion]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood v.

Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); NL Indus, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n. 8 (3d Cir. 1995); see also Mash v. Twp. of Haverford Dep't of Codes Enforcement, No. 06-4479, 2007 U.S. Dist. LEXIS 67265, at *6 (E.D. Pa. Sept. 7, 2007). A party may not use a motion for reconsideration as a mechanism for second-guessing the court's decision, which should not be disturbed or questioned simply because a party disagrees with the outcome. See EEOC v. Smokin' Joe's Tobacco Shop, Inc., No. 06-1758, 2007 U.S. Dist. LEXIS 72526, at *2 (E.D. Pa. Sept. 27, 2007) ("The motion should not be granted if the moving party is merely asking the court to 'rethink' what it has already rightly or wrongly decided"), citing Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). The present circumstances do not justify reconsideration of the denial of plaintiff's motion to reopen, and the plaintiff's motion is therefore denied.